

A

SUPPLEMENT

TO

The Corporation Trust Company
Journal

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STOCK WITHOUT THE DOLLAR MARK

REPORT OF THE SPECIAL COMMITTEE
ON CORPORATION LAW

Presented at the Thirty-second
Annual Meeting

of the

NEW YORK STATE BAR ASSOCIATION

Held at the City of Buffalo, on the 28th
and 29th of January, 1909

ISSUED BY

The Corporation Trust Company

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BUFFALO, 28th January, 1909.

TO THE NEW YORK STATE BAR ASSOCIATION:

The undersigned, being the SPECIAL COMMITTEE ON CORPORATION LAW, unanimously submit this report in pursuance of the resolution adopted by the Association in January, 1908, by which the Committee was directed to prepare and to cause to be presented to the Legislature for adoption amendments to the Corporation Laws, permitting the formation of corporations having capital stock divided into shares without assignment thereto of any value in money, and the issue of stock certificates representing merely proportionate interests in the entire capital stock without the indication of any nominal or par value in money.

The Appendix contains our draft of a statute to amend the Business Corporation Law of the State, by adding five new sections to be numbered 18, 19, 20, 21 and 22. The amendment provides for the formation—without requirement of money denomination for their shares of capital stock—of business corporations, other than those for banking, insurance, railroad, transportation and educational purposes. But, in other respects, it does not provide for the new class of business corporations any power which does not now belong to, or rest upon, stock corporations. If adopted, it will invest such business corporations and no others with the right or privilege to issue shares of stock (other than preferred stock) without that fixed money valuation which has led to the abuses of nominal, as distinguished from actual, capitalization.

Under the existing law a corporation may be formed with an authorized capital divided into shares of \$5 each and may commence business with \$500. Under the proposed law a corporation cannot begin to carry on business or incur any debt until it shall have on hand in money or in property taken at its cash value at least \$10,000 and equal to the amount of preferred stock which it may issue and not less than \$5 in respect of every other share. A corporation under the proposed law, therefore, must have definite and substantial amount of capital before it can do business or incur any debt, and this actual capital must be indicated in the certificate of incorporation. The share capital is to have no nominal or par value and is not held out to the public as an indication of the actual capital of the corporation.

For the new class of business corporations it is proposed that—

1. The certificate of incorporation shall set forth what is usually required for business corporations, except that, with respect to the capital and shares, it shall state—

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(a) That the incorporators desire to form a corporation having a capital stock divided into shares without nominal or par value thereof.

(b) The number of shares to be issued, and, if there is to be preferred stock with a preference as to principal, then the number of preferred shares and the amount of the preferred stock and of each share thereof.

(c) The minimum amount of capital, to be not less than \$10,000 and not less than the amount of the preferred stock having a preference as to principal and in addition \$5 for every other share authorized to be issued.

2. No certificate for shares not preferred as to principal shall express any nominal or par value in respect of any such share.

3. The organization tax shall be based upon the minimum capital with which the corporation will carry on business, and upon any increase thereof.

4. No such corporation shall begin to carry on business or shall incur any debt until the minimum amount of capital specified in the certificate of incorporation shall have been paid in money or in property taken at its cash value.

5. The board of directors of the corporation may issue and sell its non-assessable shares at any price or prices and on any terms that may be authorized by the certificate of incorporation or that may be fixed from time to time by the board of directors or the board of directors and stockholders pursuant to authority conferred in the certificate of incorporation, or if such certificate shall not so provide then by the consent of the holders of two-thirds of each class of shares then outstanding given at a meeting called for that purpose in such manner as shall be prescribed by the by-laws.

While, in late years, American corporations, including those of which the capital is drawn chiefly from New York sources or that in reality are organized for the doing of New York business, have been formed under the laws of other States, particularly the State of New Jersey, and this to an extent so large as to give rise to a perfectly natural jealousy on the part of our own State—none the less, and even for companies organized in other States, New York remains the financial center of the country. The financial administration of the business and industrial enterprises and interests of the United States and, indeed, of the world, is a concern of our State to an extent very far beyond that of any other State. Therefore, we may well lead the way in a change which, in our opinion, is fitted not only to avoid corporate abuses, but also to prevent the misunderstanding or

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disparagement of such corporations as conduct their business in solid, straight-forward, law-abiding fashion.

Perhaps the very strongest impression today of unfair corporate organization has arisen from so-called "over-capitalization." About this, it has been felt that there has been, or, at least, seemed to be, an element of misrepresentation or even deceit. Sales on the Stock Exchange or other market of common shares immediately after the companies have been launched made at a small percentage of nominal par (and theoretically real) value, have afforded or, at least, have seemed to afford, some reason for this wide-spread belief, even though the deception or misleading of investors by stock-watering may have been greatly exaggerated. This popular verdict, whatever its justification, is injurious to corporations and investors and to legitimate business interests.

The abolition of the money denomination of shares would, we believe, deprive those who promote corporations of the advantages, real or seeming, of that exaggerated capitalization, which undoubtedly is possible under the existing laws of every or nearly every American State; and, at the same time, it would compel investors to fix their attention upon actual value, free of the influence of what, as overwhelming experience shows, tends to become nominal or symbolic valuation. We would have the truth recognized, without the misleading effect of such valuations, that a common share of stock of a corporation represents neither more nor less than a certain aliquot part, a one-thousandth or one-millionth or other fraction, according to the number of common shares of the net value of the enterprise over and above all debts and stock preferences. If promoters or directors wish to assert a money valuation for their shares, this amendment would not prevent them from doing so in such manner as would secure the confidence of their creditors; but, they ought to be compelled to do that directly, and thereafter be rigorously held to make their representations good.

Our proposed measure would in no way affect the requirements of law with reference to taxation. The bill provides an organization tax on the same basis as at present.

The amendment will not apply to business corporations now existing nor to those formed under existing statutes, except, of course, as they shall alter their certificates of incorporation as permitted by Section 32 of the Stock Corporation Law.

Respectfully submitted.

FRANCIS LYNDE STETSON,
Chairman.
EDWARD M. SHEPARD,
VICTOR MORAWETZ,
Committee.

